IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

CRP.No. 1837 of 2002(A)

RCA.106/1999 & CROSS APPEAL BEFORE IIND ADDL. DISTRICT COURT/RENT CONTROL APPELLATE AUTHORITYI, KOZHIKODE
RCP.135/1997 of ADDL.M.C./RENT CONTROL COURT, KOZHIKODE-I

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REVN. PETITIONER: (APPELLANT/RESPONDENT)

E.C.CHERIYA AHAMMED, S/O.ALIKUNHI HAJI,
5/238 E.C. TRANSPORT, KIZHEKKE NADAKKAVU,
KOZHIKODE.

BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR
SRI.K.JAYESH MOHANKUMAR

RESPONDENT: (RESPONDENT/PETITIONER)

CHEERUVEETTIL JAMEEL KATHIRI,
S/O.KATHIRI, KACHERI AMSOM & DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO.4480/2002 IN CRP NO.1837/2002

DISMISSED.

4.12.2007

SD/- K.BALAKRISHNAN NAIR, JUDGE.

SD/- K.P.BALACHANDRAN, JUDGE.

/TRUE COPY/

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

C.R.P. NO.1837 OF 2002-A

Dated 4th December, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant and the respondent is the landlord. The Rent Control Petition was filed under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act").

2. The brief facts of the case are the following. The tenanted premises consisted of two buildings bearing door Nos.5/1238 and 5/1239. The second building is a shed which was constructed by the tenant himself by expending an amount of Rs.19,500/-. The rent for the shed was fixed as Rs.150/- per month. There was an agreement that 50% of the monthly rent will be adjusted towards the amount so expended till the said amount is wiped off. While so, in 1996, the balance amount due under the said count was paid to the tenant by the then owner of the buildings by a demand draft. Thereafter, the rent payable was Rs.150/- per month. The tenant did

not pay the rent as agreed and therefore, the same was in arrears.

3. The premises were claimed under Section 11(3), on the ground that the landlord, who is an M.B.A degree holder, wants to start a management consultancy business there. He is having the requisite qualification for starting the said business. No other room was available with him for accommodating the said consultancy business. The tenant is not solely dependent on the income from the tenanted premises for his livelihood. Other buildings are available in the locality to shift his business. Therefore, eviction was sought under Section 11(3). The tenant resisted the application, contending that the previous owner of the scheduled rooms had agreed to sell the same to him. The bona fide need alleged is false. The landlord is having his own shop, where he is running a clinical laboratory. The scheduled room is not suitable for starting the consultancy business. There are no buildings available in the locality for the tenant to shift his business, it was contended.

4. From the side of the landlord, he got himself examined as PW1 and Exts.A1 to A12 were marked. The tenant was examined as RW1 and Exts.B1 was marked from his side. The Rent Controller accepted the version of the tenant that the demand draft sent to him by the erstwhile landlord was returned to the said person. Therefore, it was held that there

was no arrears of rent in relation to the shed bearing No.5/1239. But, the claim of the landlord regarding arrears of rent in respect of the room bearing No.5/1238 was upheld. The claim of bona fide requirement for own occupation under Section 11(3) was also allowed by the Rent Controller. The tenant appealed. The landlord filed cross appeal concerning the finding against him that there are no arrears of rent for the shed bearing No.5/1239. The appellate authority dismissed the appeal and allowed the cross appeal. Hence this revision challenging the judgment of the appellate authority.

5. The learned counsel for the petitioner submitted that the appellate authority wrongly reversed the finding of the Rent Controller regarding the arrears of rent for the aforementioned shed occupied by him. In fact, Ext.B1 would show that he has returned the demand draft without encashing it. The appellate authority ignored the said document erroneously, it is submitted. Except the self serving document Ext.B1, no other evidence was produced to show that the tenant had returned the demand draft received by him. So, the appellate authority held that since the receipt is admitted, it is for the tenant to prove that he has sent the demand draft back and the same has been received by the then landlord. The appellate authority also held that the Rent Controller wrongly shifted the burden to the shoulders of the landlord to prove the aspect that the erstwhile landlord did not receive the

demand draft. We feel that the view taken by the appellate authority is a plausible view on the facts. It cannot be described as illegal, improper or irregular. Except the self serving document Ext.B1, there was no evidence adduced by the tenant to show that the demand draft admittedly received by him from the erstwhile landlord was returned to the said person and therefore, a portion of the amount expended by him for constructing the shed is remaining unpaid and therefore, there are no arrears of rent. There is no serious challenge against the finding regarding the arrears of rent for the room bearing No.5/1238.

6. The learned counsel for the petitioner secondly contended that the landlord's case that the Clinical Laboratory stated to be run by him is, in fact, run by his brother, who is a doctor, is factually wrong. The learned counsel also pointed out that at present the landlord is working in the Gulf. Therefore, his claim for the petition schedule rooms is not bona fide. We are of the view that even assuming the landlord is having some other business, still he can decide to start a new business in the form of a consultancy business. For the reason that he is having some other business, it cannot be said that his claim for the tenanted premises for starting a new business, is not bona fide. Further, the landlord need not remain idle till he gets vacant possession of the tenanted premises. Therefore, the

contentions raised by the learned counsel for the petitioner against the finding of bona fide requirement of the landlord rendered concurrently by the authorities below, cannot be accepted.

7. The petitioner contends that the finding on the second proviso to Section 11(3) made by the authorities below is unsustainable. The appellate authority mainly considered only regarding the first limb of the second proviso. It noticed the admission of the petitioner that his main income is from the transport industry. The appellate authority held that the petitioner is not running any transport industry in the tenanted premises. So, based on the said admission, his claim for the benefit of the first limb of the second proviso was declined. According to the petitioner, the said reasoning is unsustainable. He is using the tenanted premises for running his transport industry. So, the said finding is untenable. But, we are of the view that the transport industry is run elsewhere. A small room cannot be considered as the place of running of a transport industry. Further, the reasoning of the appellate authority cannot be said to be perverse. It is a plausible view on the facts, with which this Court cannot interfere under Section 20 of the Act. It is true, the appellate authority has not considered about the second limb of the second proviso. May be the petitioner may not have argued the said point before the appellate authority. Since the first limb is found against

him, the decision on the second limb of the second proviso to Section 11(3) is of no consequence.

In the result, the C.R.P fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

C.R.P.NO.1837/2002

ORDER

4.12.2007